IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

CRP.No. 2149 of 2003()

AGAINST THE ORDER DATED 19/10/2002 IN EP 242/94 IN LAR.120/1993 of II ADDL.SUB COURT,TRIVANDRUM.
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REVN. PETITIONER: APPLICANT/DECREE HOLDER:-

MARIYAMMA, KOCHUPARAMBIL VEEDU, VADAKKUMBHAGAM KARA, ANIKATTU CHENGALAM EAST VILLAGE, KOTTAYAM DISTRICT, REPRESENTED BY HER POWER OF ATTORNEY HOLDER,MVARKEYN PANJIKKARAN

BY ADV. SRI.V.R.VENKITAKRISHNAN (SR.)
SMT.G.ROOPARANI
SRI.T.V.GEORGE

RESPONDENTS: RESPONDENTS:-
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1. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO REVENUE DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. DISTRICT COLLECTOR, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SMT.K.R.DEEPA.
ADDL.ADVOCATE GENERAL

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KURIAN JOSEPH,
&
T.R.RAMACHANDRAN NAIR, JJ.

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C.R.P.No.2149 of 2003-F.
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Dated this the 19th day of July, 2007.

O R D E R

T.R.Ramachandran Nair, J.

This Civil Revision Petition is filed by the petitioner aggrieved by the order dated 19-10-2002 in EP.No.242/1994 in LAR.No.120/1993. The court below after hearing the parties fixed the balance amount to be paid to the decree holder at Rs.5,88,747/-.

2. The order is challenged by the petitioner on various grounds. According to the petitioner, she is entitled to get 15% solatium for the entire enhanced amount and also interest for the solatium amount sanctioned. It is also stated that the court below went wrong in finding that the petitioner is entitled only for the amount now fixed.

3. When the matter came up for hearing, this Court passed an interim order on 28-5-2007 wherein the petitioner was granted time to file statement of accounts regarding the balance due in terms of the decisions of the Supreme Court in *Sunder v. Union of India* (2001(3) KLT 489) and *Gurpreet Singh v. Union of India* (2006(8) SCC 457). When the matter came up for further hearing on 12.6.2007 this Court noted that pursuant to

the direction earlier issued the revision petitioner has filed a statement dated 1.6.2007. Hence a direction was issued to the Government Pleader to verify the statement and file objection, if any, on or before 25.6.2007 and if not, it will be taken that the respondents have no objection to the statement.

4. The Government Pleader has filed an objection pursuant to the above order. Along with the objection they have produced Annexure R2(a) order of this Court in CRP.No.2034/2003 dated 26-11-2004. The contentions raised in the objection are that the State had also filed the above CRP challenging the same order in EP.No.120/1993 and it was finally heard and disposed of by this Court on 26-11-2004 allowing the CRP. It is stated that the impugned orders passed by the executing court dated 19-10-2002 quantifying the amount due to the claimant/decree holder and also the order proclaiming the property for sale have been set aside by this Court and EP is remanded to the executing court with a further direction that the amount can be calculated in accordance with law. It is further pointed out that EP before the executing court is posted on 7-7-2007 and the statement filed by the revision petitioner before this Court is without disclosing the above facts. Accordingly, the respondents pray that the above CRP is to be dismissed and the matter itself has to be remanded to the court below.

5. Annexure R2(a) is the order in CRP.No.2034/2003 between the same parties. The challenge in the above CRP was against the order passed

by the executing court proclaiming 50 cents of property for sale in public auction. In para.3 of the above order it is noted that the judgment debtor filed EP.No.572/2003 to review the order fixing the balance amount and hence the grievance was against the proclamation and sale of the property. A reading of paras.5 and 6 would show that the arguments were raised regarding the order dated 19-10-2002 which is impugned in this CRP. Ultimately, the CRP was allowed and the operative portion of the order is extracted below:

> **"In the result, the Civil Revision Petition is allowed. The impugned orders passed by the executing court dated 19-10-2002 quantifying the amount due to the claimant-decree holder and also the order proclaiming the property for sale are hereby set aside. The E.P. is remanded to the executing Court. The learned Sub Judge shall calculate the amount in accordance with law and pass appropriate orders. The parties are directed to suffer their costs. I.A.No.2411/2003 shall stand dismissed."**

6. The above order of the learned Single Judge is reported in *State of Kerala v. Mariyamma* (2005(1) KLT 173). Later, the learned Single Judge suo motu reviewed the above order and the said order is reported in *State of Kerala v. Mariyamma* (2005(2) KLT 587). In the earlier order the learned Judge had considered the principles to be followed while calculating the amounts to a decree holder in a Land Acquisition Case, the obligation on the Land Acquisition Officer to deduct income tax from the different heads and also the principles to be followed while adjusting the part payments

effected by the judgment debtor. Para.2 of the reviewed judgment namely, 2005 (2) KLT 587 would show that the matter was decided to be reviewed suo motu as it was noticed that an error had been committed in calculating the amount due the claimant under Sec.23(1A) of the Land Acquisition Act and the interest payable to the claimant on such amount. It was also noticed that the findings of this Court on those points were against the decisions of the Apex Court. Ultimately the matter was heard again and the relevant principles have been laid down and the CRP was disposed of in the following manner:

> **"A perusal of the order impugned in this Civil Revision Petition shows that it is not a speaking order. The learned Sub Judge had simply accepted the statements filed by the decree holder and passed orders. So, I am of the view that the entire matter requires reconsideration.**
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> **In the result, the Civil Revision Petition is allowed. The impugned orders passed by the executing Court dated 19-10-2002 quantifying the amount due to the claimant-decree holder and also the order proclaiming the property for sale are hereby set aside. The EP is remanded to the executing Court. The learned Sub Judge shall calculate the amount in accordance with law and pass appropriate orders. The parties are directed to suffer their costs. IA.No.2411/2003 shall stand dismissed."**

Thus between the parties only these orders have been passed by this Court in the CRP.No.2034/2003.

7. The learned Sr. Counsel pointed out that the objection filed by the State does not relate to the quantum which is shown as the balance amount due to the petitioner in the land acquisition case. It was pointed out

that when this Court specifically directed the State to file its objection, if any, to the statement filed by the petitioner, they cannot side step the issue and seek for a dismissal of the CRP pointing out the Annexure R2(a). The learned Govt. Pleader submitted that when interim orders dated 28-5-2007 and 12-6-2007 were passed the existence of Annexure R2(a) order was not brought to the notice of this Court and only because of that circumstance the orders were happened to be passed and therefore, since there is a binding direction in Annexure R2(a) wherein the executing court has been directed to calculate the amount in accordance with law, no fresh orders are required in this CRP and it is only to be dismissed.

8. The learned Sr. Counsel further argued that Annexure R2(a) order in the CRP filed by the State only relates to the challenge against the proposed sale of the property and at any rate the order impugned in this CRP was not the subject matter therein and therefore the said order will not bar any consideration of the issue involved herein. Therefore, it has become necessary to consider the effect of the order in CRP.No.2034/2003.

9. A reading of the order shows the following facts:

The CRP was filed by the State challenging the order dated 24-6-2003 in EP.No.242/1994 in LAR.No.120/1993. The statement of facts reiterated in para.3 of the order noted that the executing court found that an amount of Rs.5,88,747/- was still due to the decree holder and directed the State to

deposit that amount. The judgment debtor filed EA.No.572/2003 to review the order fixing the balance amount and that review petition was still pending. While so, the property was attached and proclaimed for sale. Para.4 of the order shows that the learned counsel for the decree holder has raised a preliminary objection that the CRP challenging an order of sale alone is not maintainable and that the State has not filed any CRP against the order dated 19-10-2002 fixing the balance amount due as Rs.5, 88,747/-. The argument was that as the order fixing the amount due had already become final and conclusive and hence that decision will operate as res judicata. The above objection was resisted by the learned Government Pleader is evident from Annexure R2(a) order. The learned Judge then proceeded to discuss the issue and held in para.6 that the contention of the State that excess amounts were paid to the decree holder is not barred by res judicata and the State is entitled to raise the contention that the quantum of the amount found to be due to the decree holder is not correct. Accordingly, the contentions between the parties were elaborately considered and the CRP was disposed of setting aside the order of the executing court dated 19-10-2002 calculating the amount due to the decree holder and also the order proclaiming the sale of the property. In view of the above findings rendered by the learned Single Judge in Annexure R2(a) order, it cannot be said that the order impugned in this CRP survives still. Annexure R2(a) is an order passed by this Court after

hearing the contentions of the parties in detail. In view of the clear findings in the above order, the argument of the learned Sr. Counsel for the petitioner that the validity of the order that is impugned in this CRP was never considered therein and therefore it is open for this Court to consider the issue again is not correct. The learned Single Judge had directed the execution court to calculate the amount in accordance with law and pass appropriate orders. This is a binding direction as far as both the parties before us are concerned. In view of the above directions there is nothing for this Court to decide in this CRP afresh, particularly in view of the fact that the court below is admittedly proceeding with the matter as ordered earlier by this Court.

10. When we passed the interim orders dated 28-5-2007 and 12-6-2007 the existence of Annexure R2(a) order in CRP.No.2034/2003 was not brought to our notice. Therefore, the contention that the State cannot rely upon Annexure R2(a) order and should have responded to the statement filed by the petitioner herein as regards the balance amount does not appear to be sound. The learned Sr. Counsel further pointed out that since the interim direction of this Court was not responded by the State by filing any objection to the statement showing the balance amount, the only option to this Court is to direct the State to deposit the amount of Rs.26,11,931.81 representing the balance amount due as on 31.5.2007 within a time limit to be fixed by this Court. As noted already, when the interim order dted 12.6.2007 was passed

the existence of Annexure R2(a) had not been brought to our notice. Therefore also the contentions raised by the learned Sr. Counsel are only to be rejected. When this Court had directed the executing court to proceed in accordance with law for calculating the amount and pass appropriate orders, the same had concluded the issue. The order impugned in this CRP has been set aside for enabling the executing court to arrive at the balance amount. In view of the clear picture emerging from the fact situation, our hands are not tied up by the interim order dated 12-6-2007. Therefore, the CRP fails and the same is dismissed. We make it clear that the executing court can proceed with the matter and calculate the amounts in accordance with law.

KURIAN JOSEPH, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-

After pronouncement of the orders, learned Senior Counsel appearing for the petitioner brought to our notice that a Review Petition No.522/2005 has been filed by the petitioner against the revised order dated 23.3.2005 in

CRP.No.2034/2003. The apprehension expressed is that in view of the pendency of the above review petition, the observations in our order herein, that the executing court can proceed with the matter and calculate the amounts in accordance with law, will prejudice the contentions raised in the Review Petition and the execution petition. We make it clear that order, if any, passed while disposing of the Review Petition No.522/2005 will also govern the matter pending before the execution court.

KURIAN JOSEPH, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.